

Introduced by Senator Block

January 6, 2016

An act to amend Section 1203.49 of the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

SB 823, as introduced, Block. Criminal procedure: human trafficking.

Existing law defines and proscribes the crimes of human trafficking, solicitation, and prostitution. Existing law provides that if a defendant has been convicted of solicitation or prostitution and has completed any term of probation for that conviction, the defendant may petition the court for relief if the defendant can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking, and would authorize a court to issue an order that (1) sets forth a finding that the defendant was a victim of human trafficking, as specified, (2) dismisses the accusation or information against the defendant, or orders other relief, and (3) notifies the Department of Justice that the defendant was a victim of human trafficking when he or she committed the crime and the relief that has been ordered.

Existing law authorizes a person who was adjudicated a ward of the juvenile court for solicitation or prostitution to, upon reaching 18 years of age, petition the court to have his or her record sealed, as specified.

This bill would instead create a presumption that if a defendant or person who has been arrested, convicted, or adjudicated a ward of the juvenile court for committing any offense while he or she was a victim of human trafficking shows evidence that the arrest, conviction, or adjudication was the result of his or her status as a victim of human trafficking, the defendant or person has met the requirements for relief

under these provisions. The bill would additionally require the order of relief to include sealing related arrest and court records. The bill would provide that official documentation of a petitioner's status as a victim of human trafficking, as defined, shall establish a presumption that his or her participation in the offense was the result of the petitioner's status as a victim of human trafficking. The bill would provide that a petitioner or his or her attorney is not required to appear in person at a hearing for the relief described above, and may appear via alternate specified methods. The bill would prohibit the disclosure of the full name of a petitioner in the record of a proceeding related to his or her petition that is accessible by the public. The bill would authorize a petitioner who has obtained the relief described above to lawfully deny or refuse to acknowledge an arrest, conviction, or adjudication that is set aside pursuant to that relief.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1203.49 of the Penal Code is amended
2 to read:
3 1203.49. (a) If a defendant has been *arrested for or* convicted
4 ~~of solicitation or prostitution, any offense committed while he or~~
5 ~~she was a victim of human trafficking, including, but not limited~~
6 ~~to, solicitation or prostitution,~~ as described in subdivision (b) of
7 Section 647, ~~and if the defendant has completed any term of~~
8 ~~probation for that conviction,~~ the defendant may petition the court
9 for relief under this section. If the ~~defendant~~ *petitioner* can establish
10 ~~by clear and convincing evidence that the arrest or conviction was~~
11 the result of his or her status as a victim of human trafficking, *the*
12 ~~petitioner shall be entitled to a presumption that the requirements~~
13 ~~for relief have been met, and the court may issue an order that does~~
14 all of the following:
15 (a)

1 (1) Sets forth a finding that the petitioner was a victim of human
2 trafficking when he or she committed the ~~crime~~ offense.

3 ~~(b) Orders any of the relief described in Section 1203.4.~~

4 (2) Sets aside the verdict of guilty and dismisses the accusation
5 or information against the petitioner.

6 (3) Seals the arrest and court records relating to the arrest and
7 conviction.

8 ~~(e)~~

9 (4) Notifies the Department of Justice that the petitioner was a
10 victim of human trafficking when he or she committed the crime
11 and the relief that has been ordered.

12 (b) A person who was arrested or found to be a person described
13 in Section 602 of the Welfare and Institutions Code because he or
14 she committed an offense while he or she was a victim of human
15 trafficking, including, but not limited to, solicitation or prostitution,
16 as described in subdivision (b) of Section 647, may petition the
17 court for relief under this section. If the petitioner can establish
18 that the arrest or adjudication was the result of his or her status
19 as a victim of human trafficking, the petitioner shall be entitled to
20 a presumption that the requirements for relief have been met, and
21 the court may issue an order that does all of the following:

22 (1) Sets forth a finding that the petitioner was a victim of human
23 trafficking when he or she committed the offense.

24 (2) Sets aside the verdict of guilty and dismisses the accusation
25 or information against the petitioner.

26 (3) Seals the arrest and court records relating to the arrest and
27 adjudication.

28 (4) Notifies the Department of Justice that the petitioner was a
29 victim of human trafficking when he or she committed the crime
30 and the relief that has been ordered.

31 (c) For the purposes of this section, official documentation of
32 a petitioner's status as a victim of human trafficking shall establish
33 a presumption that his or her participation in the offense was the
34 result of his or her status as a victim of human trafficking. For the
35 purposes of this subdivision, "official documentation" means any
36 documentation issued by a federal, state, or local agency that tends
37 to show the petitioner's status as a victim of human trafficking.
38 Official documentation shall not be required for the issuance of
39 an order described in subdivision (a).

1 (d) A petitioner, or his or her attorney, is not required to appear
2 in person at a hearing for relief pursuant to this section, and may
3 appear telephonically, via videoconference, or by other electronic
4 means established by the court.

5 (e) Notwithstanding any other law, a petitioner who has obtained
6 an order pursuant to this section may lawfully deny or refuse to
7 acknowledge an arrest, conviction, or adjudication that is set aside
8 pursuant to the order.

9 (f) Notwithstanding any other law, the records of the arrest,
10 conviction, or adjudication shall not be distributed to any state
11 licensing board.

12 (g) The record of a proceeding related to a petition pursuant
13 to this section that is accessible by the public shall not disclose
14 the petitioner's full name.

15 (h) A court that grants relief pursuant to this section may take
16 additional action as appropriate under the circumstances to carry
17 out the purposes of this section.

18 (i) If the court denies the petition for relief because the evidence
19 is insufficient to establish that the arrest, conviction, or
20 adjudication was the result of the petitioner's status as a victim
21 of human trafficking, the denial shall be without prejudice. The
22 court shall state the reasons for its denial in writing and, if those
23 reasons are based on curable deficiencies in the petition, allow
24 the petitioner a reasonable time period to cure the deficiencies
25 upon which the court has based the denial.

26 SEC. 2. The Legislature finds and declares that Section 1 of
27 this act, which amends Section 1203.49 of the Penal Code, imposes
28 a limitation on the public's right of access to the meetings of public
29 bodies or the writings of public officials and agencies within the
30 meaning of Section 3 of Article I of the California Constitution.
31 Pursuant to that constitutional provision, the Legislature makes
32 the following findings to demonstrate the interest protected by this
33 limitation and the need for protecting that interest:

34 In order to protect the privacy of victims of human trafficking
35 and to improve their opportunities for recovery, it is necessary that
36 this act limit the public's right of access to the full name of a
37 petitioner who seeks relief from an arrest or conviction for an

- 1 offense in which the petitioner participated as a result of his or her
- 2 status as a victim of human trafficking.

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